



BENSALEM TOWNSHIP

Building and Planning Department
2400 Byberry Road • Bensalem PA 19020
215-633-3644 • FAX 215-633-3653

Exhibit Z-4

Zoning Hearing Board

Appeal Number: 2012-265

Township of Bensalem, Bucks County, Pennsylvania Notice of Appeal

Appeal is hereby made by the undersigned from the action of the Zoning Officer.

Check applicable item(s):

- ☐ Certification of Non-Conforming Use
- ☐ Application for Validity Challenge
- ☐ Administrative Officer in refusing my application for a building permit dated: _____
- ☐ Special Exception
- ☒ Variance from the terms of the Zoning Ordinance of the Township of Bensalem

Appellant Name: Jan Smiarowski

Address: 4600 Disston Street, Apartment 3

Philadelphia, PA 19135-1814

Phone No. _____

Owner's Name: Jamar Development, LLC

Address: 4600 Disston Street, Apartment 3

Philadelphia, PA 19135-1814

Phone No. _____

Attorney Name: Shawn D. Ward

Address: 331 E Street Rd., Suite 331

Trevose, PA 19053

Phone No. _____

Interest of appellant, if not owners (agent, lessee, etc.): Owner of Jamar Development, LLC

1. Application relates to the following:

Check items if applicable:

- | | |
|---|--|
| <input type="checkbox"/> Use | <input type="checkbox"/> Lot Area |
| <input type="checkbox"/> Height | <input checked="" type="checkbox"/> Yards |
| <input type="checkbox"/> Existing Building | <input type="checkbox"/> Proposed Building |
| <input type="checkbox"/> Occupancy | |
| <input checked="" type="checkbox"/> Other: (describe) <u>Construction of a dwelling within the Floodplain of the Poquessing Creek</u> | |

2. Brief description of Real Estate affected:

Tax Parcel Number: 2-34-1

Location: 2888 Century Lane

Lot Size: 68,596.84 SF 1.5747 Ac

Present Use: Residence

Proposed Use: Residence

Present Zoning Classification: R-A

Present Improvement upon Land: 1 1/2 Story Single Family Dwelling

Deed recorded at Doylestown in Deed Book 5449 Page 863

3. If this is an appeal to challenge, provide statement and/or basis for challenge to the validity of the zoning ordinance.

4. If this is an Appeal from action of the Zoning Administrative Officer then complete the following:

Date Determination was made: _____

Your statement of alleged error of Zoning Administrative Office: _____

5. Specific reference to section of the Zoning Ordinance upon which application for special exception or variance is based (if special or variance is desired):

§232-58, §232-111(e)(1)a & §232-111(e)(2)a

6. Action desired by appellant or applicant (statement of relief sought or special exception or variance desired):

I desire a variance for construction of a dwelling within the Floodplain of the Poquessing Creek, a
variance for Front Yard of 44.68 feet, which is less than the 50 feet front yard required & A variance for
Side Yard of 12 feet, which is less than the 20 feet front yard required

7. Reasons appellant believes board should approve desired action (refer to section or sections of ordinance under which it is felt that desired action may be allowed, and not whether hardship is (or is not) claimed, and the specific hardship.

We believe the Zoning Hearing Board could grant this variance under §232-781(e)(4) & §232-781(e)(5)
that the variance, if authorized, will not alter the essential character of the neighborhood and will
represent the minimum variance that will afford relief.

8. Has previous appeal or application for special exception or variance been filed in connection with these premises?

☐ YES ☒ NO

Specifications of errors must state separately the appellant's objections to the action of the zoning administrative office with respect to each question of law and fact which is sought to be reviewed.

I, hereby depose and say that all of the above statements and the statements contained in any papers or plans submitted herewith, are true to the best of my knowledge and belief.

Appellant's or Owner's Signature

10-12-11
Date

Sworn to and subscribed before me this

2001

HEALTH OF PENNSYLVANIA
Notarial Seal
J. Ernst, Notary Public
Jalem Twp, Bucks County
Commission Expires Nov. 16, 2012
Member, Pennsylvania Association of Notaries



BENSALEM TOWNSHIP

Building and Planning Department

Office 215-633-3644 • Fax 215-633-3753

Matthew K. Takita

Director of Building and Planning

2400 Byberry Road • Bensalem, PA 19020

September 23, 2009

Jamar Development, LLC
4600 Disston Street
Apt 3
Philadelphia, PA 19135

Project:	Demo & New Modular
Project Address:	2888 Century Lane Bensalem, PA 19020
Tax Parcel:	02-034-001
Property Owner:	Jamar Development, LLC
Permit Number:	2009-66661
Permit Status:	Application Denied

Dear Sir/Madam:

A review was conducted on the application for the referenced project pursuant to the *Code of the Township of Bensalem*, Chapter 232 ZONING. Please be advised the application submitted for the above captioned project has been rejected due to the following reason(s):

- The proposed construction in a flood plain is not permitted. [Section 232-58]
- The proposed side yard of 12 feet is less than the required 20 feet. [Section 232-111(e)(2)]
- The proposed front yard of 44.68 feet is less than the required 50 feet. [Section 232-111(e)(1)]

This letter shall serve as formal notice that your permit application has been rejected for said project until such time as the requested information has been provided.

You have the right to appeal this rejection letter. Applications for appeals to the Zoning Hearing Board can be obtained at the Building and Planning Department located in the Municipal Building at 2400 Byberry Road, Bensalem.

Respectfully,

Harold W. Gans, P.E., P.L.S.
Township Engineer


Certified and Regular Mail

HWG/lva

Enclosures

[illegible]

Approximate Scale 1" = 150'



A horizontal scale bar with a central zero point. To the left of zero is a mark labeled '150'', and to the right is a mark labeled '150''. The bar is divided into segments by tick marks.

Bucks Co. Tax Maps
2-34 and 2-36
Bensalem Township, PA

SCANNED

**ZONING HEARING BOARD
OF BENSALEM TOWNSHIP
BUCKS COUNTY, PA**

Appellant: Jan Smiarowski
4600 Disston Street, Apt. 3
Philadelphia, PA 19135-1814

Appeal No. 2012-265

Owner of Premises: Jamar Development, LLC
4600 Disston Street, Apt. 3
Philadelphia, PA 19135-1814

Premises Involved: Tax Parcel No. 02-034-001
2888 Century Lane
Bensalem, PA 19020

Prayer of Application: Appellant seeks a variance from:

- (a) §232-58 of the Bensalem Township Zoning Ordinance to permit the construction of a single-family detached dwelling in the floodplain.
- (b) §232-111(e)(1)a of the Bensalem Township Zoning Ordinance requiring front yards to be at least fifty (50) feet in depth on all lots located in R-A Rural Districts;
- (c) §232-111(e)(2)a of the Bensalem Township Zoning Ordinance requiring side yards to be at least twenty (20) feet in width on all lots located in R-A Rural Districts.
- (d) §232-57(a)(2)(b) which does not permit construction within wetlands buffer areas.

Time & Place of Hearing: June 7, 2012 at 7:30 P.M.
Bensalem Township Municipal Building
2400 Byberry Road
Bensalem, PA 19020

1. Appellant is the owner of the subject property and has the requisite interest in the subject premises to present the application to the Board.

2. The Zoning Hearing Board of Bensalem Township met the requirements of the Zoning Ordinance of Bensalem Township and the Pennsylvania Municipalities Planning Code as to the requisite legal notices of the hearings held on April 4 and May 3, 2012.

3. The subject premises is located in a R-2 Residential District pursuant to the Bensalem Township Zoning Ordinance and Map.

4. The Zoning Hearing Board admitted into evidence the following exhibits:

ZHB 1. Certification of service verifying notice by certified mail in conformity with Article XVII of the Bensalem Township Zoning Ordinance.

ZHB 2. Proof of publication of the legal advertisement placed in the Bucks County Courier Times advertising the hearing held on April 4, 2012 at 7:30 P.M. and publicly continued until May 3, 2012.

ZHB 3. The application filed on February 9, 2012 with attachments (including A1 – A8).

ZHB 4. The Bensalem Township Zoning Ordinance.

ZHB 5. Zoning Officer's photograph of subject premises depicting posting of requisite zoning notice.

5. Appellant presented, and the Board admitted into evidence, the following exhibits:

A9 Reviews from DEP and Bucks Co. Planning Commission
A10 Bensalem Township Engineer's review

6. The subject premises, located in the one hundred (100) year floodplain, is approximately one point five-seven-four-seven (1.5747) acres in area and contains a vacant, dilapidated single-family detached dwelling.

7. Appellant seeks to to replace the deteriorating single-family detached dwelling on the subject premises with a new residence.

8. The Bensalem Township Zoning Ordinance does not permit construction within the one hundred (100) year floodplain nor within wetlands buffer areas.

9. The existing single-family detached dwelling on the subject premises is a legal, nonconforming dwelling.

10. The proposed single-family detached dwelling will be located further from the river than the existing dwelling and elevated above the floodplain.

11. A portion of Appellant's proposed single-detached dwelling lies within the wetlands buffer area.

12. The Bensalem Township Zoning Ordinance requires front yards to be at least fifty (50) feet in depth on all lots located in R-A Rural Districts.

13. Appellant's proposed construction results in a front yard of approximately forty-four point six-eight (44.68) feet.

14. The Bensalem Township Zoning Ordinance requires side yards to be at least twenty (20) feet wide on all lots located in R-A Rural Districts.

15. Appellant's proposed construction results in a side yard of approximately twelve (12) feet.

16. Appellant will reside in the newly constructed single-family detached dwelling on the subject premises.

17. No objection to the proposed relief was presented at the hearing on April 4, 2012 by any adjoining landowner, neighbor or other interested party.

18. A Certification of Decision rendered by the Zoning Hearing Board on April 4, 2012 is marked Exhibit "A", attached hereto and incorporated herein.

CONCLUSIONS OF LAW

1. The subject property possesses unique physical circumstances.

2. The requested relief will not impair nearby property nor constitute a detriment to the public welfare.

3. The requested relief will not have an adverse impact on the public health, safety or welfare.

4. The requested relief will not alter the essential character of the neighborhood.

5. The requested relief does not violate the purpose or objectives of the Zoning Ordinance.

6. The requested relief is the minimum departure from the Zoning Ordinance that will afford the relief necessary to enable the reasonable use of the property after consideration of its particular circumstances and conditions.

DISCUSSION

This case involves a dilapidated, nonconforming single-family detached dwelling situated in the floodplain along the Poquessing Creek. Appellant proposes to replace the deteriorating, nonconforming home with a new home which will be elevated above the floodplain. While the Bensalem Township Zoning Ordinance does not permit construction within the floodplain nor in wetlands buffer areas, the existing deteriorating residence on the subject premises is a legal nonconforming dwelling and its replacement will have no adverse effect on neighboring properties.

The Board determined this Applicant's proposals to replace the deteriorating dwelling with a new dwelling were in harmony with the surrounding area. They further determined the requested relief was necessary to enable a reasonable use of the property and were the minimum variances that would afford relief. See Manayunk Neighborhood Council v. Zoning Board of Adjustment, 815 A.2d 652 (2002 Pa. Commwlth. Ct.). Accordingly, after consideration of the particulars of this property, the Zoning Hearing Board decided unanimously to grant the requested relief.

DECISION AND ORDER

AND NOW, this 5th day of July, 2012, after public hearing held on June 7, 2012 and pursuant to a public vote, five members voting in favor and none voting against, the Zoning Hearing Board of Bensalem Township does hereby formally **ADOPT** the above **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**. The Board further **RATIFIES** its Decision of June 7, 2012 and does hereby Order and Direct that the application stated above be and the same is hereby **GRANTED**, subject to and on the terms and conditions set forth below. Specifically, the Board does hereby grant the following relief:

A variance is granted from Section 232-58 of the Bensalem Township Zoning Ordinance to permit the replacement of the deteriorating single-family detached dwelling in the floodplain on the subject premises with a new single-family detached dwelling, said construction being otherwise not permitted by the Ordinance;

A variance is granted from Section §232-57(a)(2)(b) of the Bensalem Township Zoning Ordinance to permit the replacement of the deteriorating single-family detached dwelling on the subject premises with a new single-family detached dwelling which lies partially in the wetlands buffer area, said construction being otherwise not permitted by the Ordinance;

A variance is granted from Section 232-111(e)(1)a of the Bensalem Township Zoning Ordinance to permit the construction of a single-family detached dwelling on the subject premises resulting in a front yard setback of approximately forty-four point six-eight (44.68) feet which is less than the minimum front yard setback required by the Ordinance on all lots located in R-A Rural Districts;

A variance is granted from Section 232-111(e)(2)a of the Bensalem Township Zoning Ordinance to permit the construction of a single-family detached dwelling on the subject premises resulting in a side yard setback of approximately twelve (12) feet which is less than the minimum side yard setback required by the Ordinance on all lots located in R-A Rural Districts;

This is not a building permit or a zoning permit. Building permits and zoning permits must be secured from the appropriate township officials prior to construction or use of the premises.

The grant of the aforesaid variances does not relieve the Appellant from complying with all other requirements of the Bensalem Township Zoning Ordinance, the Bensalem Township Subdivision and Land Development Ordinance, the Bensalem Township Building Code and Fire Codes and all other applicable state, county and township ordinances and regulations.

On any Zoning Hearing Board Decision approving proposed construction of any type requiring a building permit, such building permit must be secured within twelve (12) months of the date of the Decision granting a use variance and within twenty-four (24) months of the date of the Decision granting a dimensional variance or the Zoning Hearing Board's approval is automatically voided.

ZONING HEARING BOARD OF BENSALEM TOWNSHIP, BUCKS COUNTY, PA
CERTIFICATION OF DECISION

APPEAL NO. 2012-265

TAX PARCEL NO. 02-034-001

ADDRESS: 2888 Century Lane Bensalem, PA 19020

OWNER: Jamar Development, LLC

APPELLANT: Jan Smiarowski

This certifies that the Zoning Hearing Board of Bensalem Township held a hearing on **June 7, 2012**, at **7:30 p.m.**, in the Bensalem Township Municipal Building and considered the appeal application for ~~Special-Exception~~ Variance/Reversal of Determination of Zoning Officer filed by **Jan Smiarowski** on **February 9, 2012** to seek relief as stated on the advertised legal notice of appeal or application.

More specifically, the Board considered and rendered a decision on a request for relief from the following provisions of the Zoning Ordinance:

Section	Description	Decision	Vote
<u>232-58</u>	<u>construction within the floodplain</u>	<u>Granted</u>	<u>5-0</u>
<u>232-111(e)(1)a</u>	<u>front yard setback</u>	<u>Granted</u>	<u>5-0</u>
<u>232-111(e)(2)a</u>	<u>side yard setback</u>	<u>Granted</u>	<u>5-0</u>
<u>232-57(a)(2)(b)</u>	<u>wetlands buffer</u>	<u>Granted</u>	<u>5-0</u>

The Decision of the Board is subject to the following special conditions:

None

MICHAEL BRIEL

June 7, 2012

DATE

ALBEKI CHAMPION

This is not a building or zoning permit. Such permits must be secured from the appropriate township officials prior to construction or use of the premises. Building permits must be secured within one (1) year of the date of the decision granting a use variance and within two (2) years of the date of the decision granting a dimensional variance or any approval by this Board is automatically voided. Applicant must comply with all other applicable township, county, state and federal laws, regulations and ordinances.

Findings of Fact and Conclusions of Law will be approved by the Zoning Hearing Board at its next regularly scheduled meeting and forwarded to Appellant with the formal Decision and Order of the Board.

Pennsylvania Department of Environmental Protection
Southeast Regional Office
Watershed Management Program



WAIVER OF PERMIT ACKNOWLEDGEMENT

Applicant:	<u>Jamar Development, LLC c/o Jon Smiarowski</u>	DEP File No.: <u>WL 0911305</u>
	<u>4600 Disston Street</u>	Municipality: <u>Philadelphia</u>
	<u>Philadelphia, PA 19135-1814</u>	County: <u>Philadelphia</u>
Project Name:	<u>2888 Century Lane, Bensalem PA TMP: 2-34-1</u>	Date: <u>13 July 2011</u>

This is in reference to your request for a waiver of permit acknowledgement, received by this office on June 30, 2011.

In accordance with the provisions of Section 4 of the Dam Safety and Encroachments Act, the Act of November 26, 1978, P.L. 1375, No. 325 (as amended by Act 70), the proposed structures and/or activity is regulated by this Act.

- ☒ Please be advised that the requirements for a permit are waived for this type of structure or activity in accordance with Section 7(a) of the Dam Safety and Encroachments Act and the provisions of Section 105.12(a)(2) of Chapter 105 rules and regulations, Dam Safety and Waterway Management, as amended on October 12, 1991.
- ☐ Pursuant to Section 105.171, the owner is responsible for maintaining the structure(s) in good repair and assuring that the flood carrying capacity of the structure(s) is maintained at all times. This letter is your written approval to perform channel cleaning and to use mechanized equipment for this purpose, provided you meet the criteria and conditions set forth in the enclosed "Standards For Channel Cleaning At Bridges and Culverts" and the operation, maintenance or other requirements of Chapter 105.

The waiver of permit requirements does not give any property rights, either in real estate or material, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest, in, to, or over any land belonging to the Commonwealth of Pennsylvania; neither does it authorize any injury to private property or invasion of private rights.

Conditions of this Approval:

1. It is required that you secure all other approvals that may be necessary under other federal, state or local regulations and meet the construction, operation, maintenance or other requirements of Chapter 105.
2. Proper erosion and sedimentation control measures are required during and after construction and the adequacy of these measures can be determined by contacting your local County Conservation District. The Bucks County Conservation District can be contacted at 215.345.7577.
3. It is recommended that you contact the Pennsylvania Fish & Boat Commission at 717-626-0228 prior to starting work and that the work be performed in such a manner to protect fish and other aquatic life.
4. An on-site inspection has not been performed. If wetlands exist and are affected by the activities described in this letter, this review/approval is void and a Water Obstruction and Encroachment Permit must be obtained prior to performing any work.
5. The owner may be required to apply for a permit under this chapter if the Department, upon complaint or investigation, finds that a structure or activity which is eligible for a waiver, has a significant effect upon safety or the protection of life, health, property or the environment.

Federal Approval: ☒ N/A

- ☐ Enclosed is your Clean Water Act Section 404 State Programmatic General Permit (SPGP) which provides federal authorization for the waived activity.
- ☐ Please be advised that you do not have federal authorization. You must contact the Corps of Engineers directly regarding federal authorization at 215-656-6728.

If you should have any questions concerning this matter, please contact me:

☐ Enclosure

cc: PFBC - SERO
 USACOE, ☒ Phila. District ☐ Balt. District
 Bucks CCD
 Municipality: Bensalem Township
 Author: R. Brown
 Re 30

Sincerely,

Randall Brown
 Water Pollution Biologist 2
 Coastal Resources Management Program
 PA DEP - Southeast Regional Office

Note: The Chapter 105 Regulations can be viewed on the web at www.pacode.com/secure/data/025/chapter105/chap105toc.html